

JUDICIAL DEPARTMENT

THE HIGH COURT OF KERALA

NOTIFICATION

No. D1(A)-58357/2002.

20th September 2007.

By virtue of the powers conferred by Section 122 of the Code of Civil Procedure, 1908 and Clause (d) of Sub-section (2) of Section 89 of the said Code and of all other powers enabling it in this behalf, the High Court of Kerala hereby publishes for general information the draft of the Civil Procedure (Alternative Dispute Resolution) Rules, 2007.

Notice is hereby given that the said draft Rules will be taken up for consideration after 30 days from the date of publication of this notification in the Gazette. Any objections or suggestions received from any person with regard to the draft rules will be considered by the High Court.

Objections or suggestions, if any, shall be addressed to the Registrar (Subordinate Judiciary), High Court of Kerala, Kochi-31.

CIVIL PROCEDURE (ALTERNATIVE DISPUTE RESOLUTION) RULES, 2007

Rule 1—Title:

These Rules shall be called the 'Civil Procedure (Alternative Dispute Resolution) Rules, 2007'.

PART—1

[General Rules]

Rule 2—Definitions:

- (a) Settlement by 'Arbitration' means the process by which an arbitrator appointed by parties or by the Court, as the case may be, adjudicates the disputes between the parties to the suit and passes an award by applying the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) and the Rules made thereunder, in so far as they refer to arbitration.
- (b) Settlement by 'Conciliation' means the process by which a conciliator who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the suit by applying the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) and the Rules made thereunder, in so far as they relate to conciliation.
- (c) Settlement by 'Mediation' means the process by which a mediator appointed by parties or by the Court, as the case may be, mediates the dispute

between the parties to the suit by applying the provisions of these Rules, in so far as they relate to mediation.

- (d) Settlement by 'Lok Adalat' means settlement by way of compromise entered into before the Lok Adalat as provided for by the Legal Services Authority Act, 1987 (39 of 1987).
- (e) 'Judicial Settlement' means settlement by way of compromise entered into before a suitable institution or person to which the Court has referred the dispute for settlement in accordance with the provisions of the Legal Service Authority Act, 1987 (39 of 1987).

Rule 3—Procedure for directing parties to opt for alternative modes of settlement:

- (a) The court shall after formulating the terms of settlement under Section 89 (1) of the Code of Civil Procedure give them to the parties to submit their observations within such time as the court may specify.
- (b) The court may after hearing the parties, reformulate the terms of a possible settlement and shall direct the parties to opt for one of the modes of settlement of disputes outside the Court as specified in clauses (a) to (d) of sub-section (1) of Section 89 of the Code of Civil Procedure within 15 days from the date fixed for submission of observations by the parties.

Rule 4—Court to give guidance to parties while giving direction to opt:

- (a) The court shall before directing the parties to exercise option under clause (b) of Rule 2, give such guidance as it deems fit to the parties, by drawing their attention to the relevant factors which parties will have to take into account, before they exercise their option as to the particular mode of settlement, namely;
 - (i) that it will be to the advantage of the parties, so far as time and expense are concerned, to opt for one or other of these modes of settlement referred to in Section 89 of the Code of Civil Procedure rather than seek a trial on the disputes arising in the suit;
 - (ii) that, where there is no relationship between the parties which requires to be preserved, it may be in the interest of the parties to seek reference of the matter to arbitration as envisaged in clause (a) of sub section (1) of Section 89 of the Code of Civil Procedure;

(iii) that, where there is a relationship between the parties which requires to be preserved, it may be in the interest of parties to seek reference of the matter to conciliation or mediation, as envisaged in clauses (b) or (d) of sub section (1) of Section 89 of the Code of Civil Procedure.

Explanation:—Disputes arising in matrimonial, maintenance and child custody matters shall, among others, be treated as cases where a relationship between the parties has to be preserved.

(iv) that, where parties are interested in a final settlement which may lead to a compromise, it will be in the interests of the parties to seek reference of the matter to Lok Adalat or to judicial settlement as envisaged in clause (c) of sub-section (1) of section 89 of the Code of Civil Procedure.

Rule 5—Procedure for reference by the Court to the different modes of settlement:

- (a) Where all parties to the suit decide to exercise their option and to agree for settlement by arbitration, they shall apply to the court, within thirty days of the direction of the court under clause (b) of Rule 3 and the court shall, within thirty days of the said application, refer the matter to arbitration and thereafter the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) which are applicable after the stage of making of the reference to arbitration under that Act shall apply as if the proceedings were referred for settlement by way of arbitration under the provisions of that Act.
- (b) Where all the parties to the suit decide to exercise their option and to agree for settlement by the Lok Adalat or where one of the parties applies for reference to Lok Adalat, the procedure envisaged under the Legal Services Act, 1987 and in particular by section 20 of that Act, shall apply.
- (c) Where all the parties to the suit decide to exercise their option and to agree for judicial settlement, they shall apply to the court within thirty days of the direction under clause (b) of Rule 3 and then the court shall, within thirty days of the application, refer the matter to a suitable institution or person and thereafter the provisions of the Legal Services Authority Act, 1987 (39 of 1987) which are applicable after the stage of making of the reference to Lok Adalat under that Act, shall apply as if the proceedings were referred for settlement under the provisions of that Act.
- (d) Where all the parties opt and agree for conciliation, they shall apply to the court, within thirty days of the direction under clause (b) of Rule 3 and the court shall, within thirty days of the application refer the matter to conciliation and thereafter the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) which are applicable after the stage of making of the reference to conciliation under that Act, shall apply, as if the proceedings were referred for settlement by way of conciliation under the provisions of that Act.
- (e) Where all the parties opt and agree for mediation, they shall apply to the court within thirty days of the direction under clause (b) of Rule 3 and the court shall, within thirty days of the application, refer the matter to mediation and thereafter the provisions of these Rules shall apply, in so far as they relate to mediation.
- (f) Where, there are more than 2 sets of parties having diverse interests and some of them opt and agree to resolve the dispute between them by arbitration or conciliation or judicial settlement or mediation, they shall apply to the court within 30 days of the direction under clause (b) of Rule 3 and then the court shall, within 30 days of the application refer the matter for settlement in the manner agreed to by the parties, provided that the court is of the opinion that the dispute between the consenting parties can be resolved independently.
- (g) Where there is no consensus among the parties as to the mode of settlement, the court shall, after affording to the parties an opportunity of hearing, persuade the parties to arrive at a consensus as to the mode of settlement and if the parties are not able to arrive at a consensus as to the mode of settlement, consider whether the matter can be referred for decision by arbitration, if one of the parties is willing for settlement by arbitration as provided under clause (f) above.
- (h)
 - (i) No next friend or guardian for the suit shall, without the leave of the court, expressly recorded in the proceedings of the court, opt for any one of the modes of alternative dispute resolution nor shall enter into any settlement on behalf of a minor or person under disability with reference to the suit in which he acts as mere friend or guardian.
 - (ii) where an application is made to the court for leave to enter into a settlement initiated into in the alternative dispute resolution proceedings on behalf of a minor or other person under disability and such minor or other person under disability is represented by counsel or pleader, the counsel or pleader shall file a certificate along with the said application to the effect that the settlement is, in his opinion, for the benefit of the minor or other person under disability. The decree of the court based on the settlement to which the minor or other person under disability is a party, shall refer to the sanction of the court thereto and shall set out the terms of the settlement.

Rule 6—Appointment of Arbitrator, Conciliator, Judicial Settlement Authority and Mediator:

- (a) Where all parties to the suit decide to exercise their option and agree for settlement by arbitration, they shall while applying to the court under Rule 5 furnish the names of arbitrator/arbitrators acceptable to them and if the parties fail to reach a consensus on the arbitrator/arbitrators to be appointed, the court shall, after affording the parties an opportunity of hearing, persuade the parties to arrive at a consensus as to the arbitrator/arbitrators and if the parties still fail to reach a consensus, appoint the arbitrator/arbitrators, having regard to the nature of the dispute and the qualification, competency, independence, impartiality etc. of the arbitrator proposed to be appointed, provided that in any case, the number of arbitrator appointed shall not be an even number.
- (b) Where all parties to the suit decides to exercise their option and agree for settlement by conciliation or judicial settlement otherwise than through Lok Adalat or mediation, they shall while applying to the court under Rule 5 furnish the names of conciliator/conciliators or judicial settlement authority or mediator/mediators, as the case may be, acceptable to them and if the parties fails to reach a consensus on the conciliatory forum, the court shall, after affording the parties and opportunity of hearing, persuade the parties to arrive at a consensus as to the conciliatory forum and if the parties still fail to reach a consensus, appoint a sole conciliatory forum to settle the dispute.

Rule 7—Applicability to other proceedings:

The provisions of these Rules may be applied to proceedings before the Courts, including Family Courts constituted under the Family Courts Act (66 of 1984), while dealing with matrimonial, maintenance and child custody disputes, wherever necessary, in addition to the rules framed under the Family Courts Act, (66 of 1984).

PART II
[Mediation Rules]

Rule 8—Qualifications of persons to be nominated/appointed as mediators:

The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Rule 3, namely:

- (a) (i) Retired Judges of the Supreme Court of India;

- (ii) Retired Judges of the High Court;
- (iii) Retired District Judge and Sessions Judges.
- (b) Legal practitioners with at least fifteen years standing at the Bar (at the level of the Supreme Court or the High Court; or the District Courts or Courts of equivalent status).
- (c) Experts or other professionals with at least fifteen years standing in the respective fields.

Rule 9—Disqualifications of persons to be nominated/appointed as mediators:

The following persons shall be deemed to be disqualified for being nominated/appointed as mediators:

- (i) any person who has been adjudged as insolvent or is declared of unsound mind.
- (ii) any person against whom criminal charges involving moral turpitude are framed by a criminal court and are pending;
- (iii) any person who has been convicted by a criminal court for any offence involving moral turpitude;
- (iv) any person against whom disciplinary proceedings or charges relating to moral turpitude have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment.
- (v) any person who is interested or connected with the subject matter of dispute or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing.
- (vi) any legal practitioner who has or is appearing for any of the parties in the suitor in any other suit or proceedings.

Rule 10—Venue for conducting mediation:

The mediator shall conduct the mediation at any place as may be agreed upon by the parties or fixed by the mediator.

Rule 11—Duty of mediator to disclose certain facts:

- (a) When a person is approached in connection with his possible appointment as a mediator, the person shall disclose in writing to the parties, any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.
- (b) Every mediator shall, from the time of his appointment and through out the continuance of the mediation proceedings, without delay, disclose to the parties in writing, about the existence of any of the circumstances referred to in clause (a).

Rule 12—Cancellation of appointment

Upon information furnished by the mediator under Rule 6 or upon any other information received from the parties or other persons, if the Court, in which the suit is filed, is satisfied, after conducting such inquiry as it deems fit, and after giving a hearing to the mediator, that the said information has raised a justifiable doubt as to the mediator's independence or impartiality, it shall cancel the appointment by a reasoned order and replace him by another mediator.

Rule 13—Procedure of mediation

- (a) The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.
- (b) Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure thereafter mentioned, namely:—
 - (i) He shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all parties have to be present.
 - (ii) He may conduct joint or separate meetings with the parties;
 - (iii) Each party shall furnish to the mediator, copies of pleadings or documents or such other information as may be required by him in connection with the issues to be resolved.

Provided that where the mediator is of the opinion that he should look into any original document, the court may permit him to look into the original document before such officer of the court and on such date or time as the court may fix.

Rule 14—Mediator not bound by Evidence Act, 1872 or Code of Civil Procedure, 1908

The mediator is not bound by the Code of Civil Procedure 1908 or the Evidence Act, 1872, but shall be guided by principles of fairness and justice, have regard to the rights and obligations of the parties usages of trade, if any, and the nature of the dispute.

Rule 15—Appearance of parties at sessions or meetings on due dates

The parties shall be present personally or through their counsel or through their authorized representatives.

Rule 16—Administrative Assistance

In order to facilitate the conduct of mediation proceedings, the parties may arrange for administrative assistance by a suitable institution or person with the consent of the mediator.

Rule 17—Offer of settlement by parties

Any party to the suit may, 'without prejudice', offer a settlement to the other party at any stage of the proceedings, with notice to the mediator.

Rule 18—Role of mediator

- "(i) The mediator shall attempt for voluntary resolution of the dispute by the parties by facilitating discussion between the parties directly or by communicating with each of them, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that it is the parties own responsibility for making decisions which affect them.
- (ii) The mediator shall not impose any terms of settlement on the parties."

Rule 19—Time limit for completion of mediation

On the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator, the mediation shall stand terminated, unless the court, which referred the matter, either *suo moto*, or upon request by the mediator or any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of 60 days.

Rule 20—Confidentiality, disclosure and inadmissibility of information

- (1) The mediator shall not disclose confidential information concerning the dispute received from any party to the proceedings unless permitted in writing by the said party.
- (2) Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to:
 - (a) views expressed by a party in the course of the mediation proceedings;
 - (b) documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators.

- (c) Proposals made or views expressed by the mediator;
- (d) Admission made by a party in the course of mediation proceedings;
- (e) The fact that a party had or had not indicated willingness to accept a proposal.

(3) There shall be no stenographic or audio or video recording of the mediation proceedings.

Rule 21—Privacy

Mediation sessions and meetings are private; only the concerned parties or their counsel or authorized representatives can attend. Other persons may attend only with the permission of the parties or with the consent of the mediator.

Rule 22—Immunity

No mediator shall be held liable for anything bona fide done or omitted to be done by him during the mediation proceedings for civil or criminal action nor shall he be summoned by any party to the suit to appear in a court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

Rule 23—Communication between mediator and the court

- (a) There shall be no communication between the mediator and the court except for
 - (i) intimating about the failure of the party to attend the mediation;
 - (ii) intimating that the parties have settled the dispute; and
 - (iii) getting advice on procedural matters with the consent of the parties.
- (b) The communication with respect to matters stated in sub clauses (i) to (iii) of clause (a) above shall be in writing and the copies of the same shall be given to the parties or their counsel or authorized representatives.

Rule 24—Settlement Agreement

- (1) Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues the same shall be reduced to writing, verified and signed by the parties or their power of attorney holder. The signatures of the parties to such an agreement shall be attested by their respective counsel or by any of the authorities mentioned in Rule 27 of the Kerala Civil Rules of Practice.

- (2) The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the court in which the suit is pending.
- (3) Where no agreement is arrived at between the parties, before the time limit stated in Rule 14 or where, the mediator is of the view that no settlement is possible, he shall report the same to the said court in writing.

Rule 25—Court to fix a date for recording settlement and passing decree

- (1) Within seven days of the receipt of any settlement, the court shall issue notice to the parties fixing a day for recording the settlement, such date not being beyond a further period of fourteen days from the date of receipt of settlement, and the court shall record the settlement, if it is lawful.
- (2) The court shall then pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.
- (3) If the settlement disposes of only certain issues which are severable and if a decree could be passed to the extent of the settlement, the court after recording the settlement on the date fixed for the same, may pass a decree straight away in accordance with the settlement on those issues which were settled without waiting for a decision of the court on other issues which are not settled. If the issues settled are not servable the court shall wait for the decision of the court on other issues which are not settled.
- (ii) if the issues are not servable, the court shall wait for a decision of the court on the other issues which are not settled.

Rule 26—Fee of mediator and costs

- (1) The fee of the mediator/mediators and the expenditure for the mediation shall be fixed by the mediator/mediators with the concurrence of the court and the same shall be paid by the parties so agreed.
- (2) Where a party is entitled to legal aid under Section 12 of the Legal Services Authority Act, 1987, the amount of fee payable to the mediator and costs shall be fixed by the mediator in consultation with concerned Legal Services Authority and with the concurrence of the court. The fee and costs so fixed shall be paid by the concerned Legal Services Authority.

Rule 27—Ethics to be followed by the mediator

The mediator shall:

- (1) follow and observe these Rules strictly and with due diligence;

- (2) not carry on any activity or conduct which could reasonably be considered as conduct unbefitting of a mediator;
- (3) uphold the integrity and fairness of the mediation process;
- (4) ensure that the parties involved in the mediation and fairly informed and have an adequate understanding of the procedural aspects of the process;
- (5) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;
- (6) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;
- (7) avoid, while communicating with the parties, any impropriety or appearance of impropriety;
- (8) be faithful to the relationship of trust and confidentiality imposed in the office of mediator;
- (9) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;
- (10) recognize that mediation is based on principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary agreement;
- (11) maintain the reasonable expectations of the parties as to confidentiality;
- (12) refrain from promises or guarantees of results.

(By order)

A. V. RAMAKRISHNA PILLAI,
Registrar (Subordinate Judiciary).

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport).

The Honourable Supreme Court in its Judgement in WP (C) 496/2002 entitled 'Salem Advocates Bar Association Vs. Union of India, directed the High Courts to frame necessary rules to give effect the alternative modes of dispute resolution envisaged in Section 89 of the code of Civil Procedure as amended by Act 46 of 1999.

The High Court after considering the matter in all its detail, decided to issue separate rules providing guidelines for alternative dispute resolution.

This notification is intended to achieve the above object.